IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 611 of 2007()

AGAINST THE ORDER DATED 27/02/2007 IN CRMP 1031 2007 IN SC.685/2005 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM

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PETITIONER: ACCUSED IN SC 685/2005

REJI, S/O.IYPE POULOSE,
VAZHAPPILLYKUDIYIL HOUSE, KOMBANADU,
PERUMBAVOOR.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE, KURUPPUMPADY POLICE STATION, PERUMBAVOOR.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.611 of 2007

Dated this the 6th day of March, 2007

ORDER

The petitioner claims the luxury of a further opportunity to cross examine PW8, a doctor, who was examined as a witness against him in a prosecution under Section 307 I.P.C. The doctor was cross examined also. But it is now submitted that in the course of cross examination, vitally relevant questions have been omitted to be put to the doctor. The petitioner does not blame anyone else, but laments that if the necessary questions were not put to the witness by recalling him, that will cause great hardship and prejudice to the petitioner.

2. The learned Judge by the impugned order rejected the said prayer holding that it would only further delay the proceedings.

3. The learned counsel for the petitioner submits that the doctor is available and is working within the district of Ernakulam. Trial is being held before the Additional Sessions Judge of Ernakulam. In these circumstances, subject to any appropriate and reasonable terms, the petitioner may be granted opportunity to recall and further cross examine PW8, it is prayed.

4. It may not be correct to say that I am too impressed with the need to recall the witness. But I take note of the fact that the petitioner is one who is facing a criminal trial and his grievance that the omission or the alleged omission of his counsel should not be permitted to operate against him in the adjudication of culpability does weigh with me to indulgently grant the petitioner a further opportunity.

5. PW8 will certainly be unnecessarily inconvenienced to come to the Court again. But I am satisfied that insistence on appropriate terms to compensate him shall ensure the interests of justice.

6. This Crl.M.C is, in these circumstances, allowed. The petitioner shall be permitted by the learned Sessions Judge to recall PW8 on condition that the petitioner deposits bata and expenses for the witness and a further amount of Rs.250/- (Rupees Two hundred fifty only) which shall be released to PW8 when he appears before the learned Sessions Judge.

7. Hand over a copy of this order to the learned counsel for the petitioner. The same shall be produced before the learned Sessions Judge before 09.03.2007 and the necessary steps shall be taken forthwith.

(R.BASANT, JUDGE)

rtr/-